IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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WEST. DIST. OF PENNSYLVANIA

ACCU-SPEC ELECTRONIC SERVICES, INC.,
Plaintiff

v.

CENTRAL TRANSPORT INTERNATIONAL, INC. and LOGISTICS PLUS, INC.,
Defendants

C.A. NO.: 03-394 E

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ACCU-SPEC ELECTRONIC SERVICES' RESPONSIVE CONCISE STATEMENT IN OPPOSITION TO CENTRAL TRANSPORT INTERNATIONAL, INC.'S MOTION FOR SUMMARY JUDGMENT

ACCU-SPEC ELECTRONIC SERVICES, INC., ("Accu-Spec") by its attorneys, MacDonald, Illig, Jones & Britton LLP, files this Responsive Concise Statement in Opposition to Central Transport International, Inc.'s Motion for Summary Judgment pursuant to Local Rule 56.1, stating as follows:

1. Admitted.

2. It is admitted that Logistics Plus issued a rate to Accu-Spec for transportation of the freight from origin to destination. It is denied that Logistics Plus acted as a freight forwarder because the assertion that Logistics Plus is a freight forwarder is a conclusion of law to which no response is required. To the extent that a response is required, for the reasons identified in the "Additional Material Facts" section below, Logistics Plus acted as a broker or an "agent-

EXHIBIT
C

forwarder" in arranging Central Transport's shipment of the x-ray machine from Dage to Accu-Spec.

3. Admitted.

4. It is denied that any agreement between Logistics Plus and Central Transport was separate from the agreement by which Central Transport physically picked up the x-ray machine. Chris Fanzini of Logistics Plus testified that he called Central Transport at Accu-Spec's request to get the cost of shipping the x-ray machine from Dage to Accu-Spec. (Accu-Spec Exhibit 1, Fanzini Depo., p 13, line 11 - p. 15, line 19).[1] Furthermore, the cited reference to Chris Fanzini's testimony does not state that there was a separate agreement between Central Transport and Logistics Plus. (Central Transport Exhibit D, p. 19, lines 9-13).

5. Denied as stated. By way of further answer, Central Transport picked up the freight from Dage on February 5, 2003 in accordance with the terms of the Delivery Receipt or freight bill attached to the Complaint as Attachment A.[2] This receipt identifies Dage as the shipper, not Accu-Spec. (Central Transport's Exhibit A, Attachment A; Accu-Spec Appendix 2, J. Rafferty Depo. , p.21, lines 12-15; Accu-Spec Appendix 3, J. Cackowski Depo., p. 14, lines 3-6).

6. Admitted. By way of further answer, the delivery was by Central Transport. (Accu-Spec. Exhibit 4, Depo. of D. Meabon, p. 8, lines 1-5).

7. Admitted.

8. Admitted.

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1 Unless otherwise indicated, all references to Appendices by letter refer to the Appendix of Exhibits filed by Central Transport in support of its Motion for Summary Judgment. All Appendices referred to by numbers refer to the Appendix of Exhibits filed by Accu-Spec.

2 Accu-Spec attached several exhibits to its Complaint. To avoid confusion, these exhibits will be referred to as Attachments in the Responsive Statement of Facts and Brief in Opposition.

9. Denied as stated. Central Transport also communicated with Dage regarding pick up, transportation and delivery instructions for the freight. (Accu-Spec Exhibit 5, Deposition of J. Fisher, p 10, lines 9-11).

10. Admitted. By way of further answer, Accu-Spec also notified Central Transport of the damage to the x-ray machine. (Central Transport Exhibit A, Attachments B, C and D).

11. Accu-Spec is without sufficient knowledge, information or belief to admit or deny the allegation in this paragraph for purposes of this motion. By way of further answer, this statement accurately reflects Central Transport Exhibit F.

12. Accu-Spec is without sufficient knowledge, information or belief to admit or deny the allegation in this paragraph for purposes of this motion. By way of further answer, this statement accurately reflects Central Transport Exhibit F.

13. Accu-Spec is without sufficient knowledge, information or belief to admit or deny the allegation in this paragraph for purposes of this motion. By way of further answer, this statement accurately reflects Central Transport Exhibit F.

14. Accu-Spec is without sufficient knowledge, information or belief to admit or deny the allegation in this paragraph for purposes of this motion. By way of further answer, this statement accurately reflects Central Transport Exhibit F.

15. Admitted.

16. Denied. The deposition testimony quoted does not state that Logistics Plus physically picked up property at an origin and moves it to a destination for compensation. The cited testimony states that the dispatchers moved freight, it does not say that Logistics Plus picked up the freight. (Central Transport Exhibit D, p. 7, line 24 - p. 8, line 1).

17. Accu-Spec is without sufficient knowledge, information or belief to admit or deny the allegation in this paragraph for purposes of this motion. By way of further answer, this statement accurately reflects Central Transport Exhibit F and G.

18. Denied. It is specifically denied that Logistics Plus assumed responsibility for transportation from the place of origin to the place of destination. (Accu-Spec Exhibit 6, Berlin Depo. p. 16, lines 2-8; Accu-Spec Exhibit 7).

19. Denied as stated. By way of further answer, Logistics Plus retained Central Transport to provide transportation services for the x-ray machine from Dage to Acc-Spec and the x-ray machine remained in Central Transport's physical custody from origin to destination. (Accu-Spec Exhibit 3, Cackowski Depo., p. 62, lines 11-20).

20. Admitted. By way of further response, Central Transport issued a Delivery Receipt as required by a common carrier under the Carmack Amendment. (Central Transport Exhibit A, Attachment A).

Additional Material Facts

21. Accu-Spec negotiated a rate for shipment of the x-ray machine with Central Transport. (Accu-Spec Exhibit 8, Depo. of G. Horetsky, p. 16, lines 1-19).

22. To conduct these negotiations, Accu-Spec used the services of defendant Logistics Plus. (Accu-Spec Exhibit 1, C. Fanzini Depo. , p. 13 line 11- p. 15, line 19).

23. Logistics Plus charged a fee for its service, which was a percentage of the amount charged by Central Transport. (Accu-Spec Appendix 6, Berlin Depo., p. 24, lines 9-14).

24. Central Transport communicated directly with Dage Industries regarding the pick -up of the x-ray machine at Dage's facility. (Accu-Spec Exhibit 5, Deposition of J. Fisher, p 10, lines 9-11).

25. Central Transport identified Dage as the shipper on Central Transport's delivery receipt, not Logistics Plus. (Central Transport Exhibit A, Attachment A.)

26. Central Transport identified one of its affiliates, C. C. Southern, Inc. (CSUR) as the origin carrier on its own delivery receipt. (Central Transport Exhibit A, Attachment A; Accu-Spec Exhibit 9).

27. Central Transport identified another one of its affiliates, C. C. Midwest, Inc. (CCMC) as the delivering carrier on its delivery receipt. (Id.)

28. Central Transport identified Accu-Spec as the consignee on Central Transport's delivery receipt. (Central Transport Exhibit A, Attachment A.)

29. Central Transport's driver, Grminder Shing, picked up and signed for the x-ray machine at Dage's facility. (Accu-Spec Exhibit 10, Letter from Attorney William J. Stoycos dated June 25, 2004; Accu-Spec Exhibit 11, Bill of Lading).

30. The x-ray machine remained in Central Transport's sole custody and control from the time it left Dage's facility to the time it arrived at Accu-Spec's facility. (Accu-Spec Exhibit 3, Cackowski Depo., p. 62, lines 11-16).

31. The x-ray machine was never in Logistics Plus' custody and control. Id.

32. The crate containing the x-ray machine was delivered to Accu-Spec's facility by Central Transport's driver, Dale Meabon. Accu-Spec Exhibit 4, Meabon Depo. Tr., p. 8, lines 1-5).

33. The crate was opened in Accu-Spec's parking lot after it was removed from Central Transport's truck. (Id., p. 8, line 20 - p. 9, line 5).

34. Mr. Meabon could see when the crate was opened that the x-ray machine was damaged. (Id., p. 10, lines 7-9).

35. Nothing that occurred while the crate was unloaded at Accu-Spec's facility could have caused the damage. (Id., p. 10, lines 10-13).

36. Logistics Plus did not accept responsibility for the condition of the shipment. (Accu-Spec Exhibit 6, Berlin Depo. p. 16, lines 2-8; Accu-Spec Exhibit 7).

37. The filing of any claim in a shipment in which Logistics Plus acts as a forwarder agent is between the carrier (Central Transport) and the consignee (Accu-Spec). Id.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served upon all other parties appearing of record by First-Class United States Mail sent on November 15, 2004.

Thomas A. Pendleton

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IN THE UNITED STATES DISTRICT COURT
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ACCU-SPEC ELECTRONIC SERVICES, INC., Plaintiff v. CENTRAL TRANSPORT INTERNATIONAL, INC. and LOGISTICS PLUS, INC., Defendants	)))))))))	 C.A. NO.: 03-394 E JUDGE: McLAUGHLIN

ORDER

AND NOW, this ______ day of ____________________, 200__, upon consideration of Central Transport International, Inc.'s Motion for Summary Judgment and the Brief in Opposition thereto received from the other parties, it is hereby ORDERED, ADJUDGED, and DECREED that Central Transport's Motion for Summary Judgment is denied.

____
Sean J. McLaughlin, J.